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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,360	10/21/2003	Sydney Gearing	GSCA-10002/01	4243
25006 7590 08/09/2007 GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021			EXAMINER VANAMAN, FRANK BENNETT	
			ART UNIT 3618	PAPER NUMBER
			MAIL DATE 08/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/690,360

Applicant(s)

GEARING, SYDNEY

Examiner

Frank Vanaman

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-15, 17-23 and 25-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-15, 17-23, 25-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Status of Application

1. Applicant's amendment, filed May 24, 2007, has been entered in the application. Claims 1, 4-15, 17-23 and 25-34 are pending.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1, 4, 5, 8-15, 17, 18, 21, 23, and 25-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawamoto (US 6,334,501) in view of Petley (US 6,591,935). Kawamoto teaches a sound reducing component for a vehicle which may be used off road, and in combination with at least one vehicle silencer (4), including an adapter (30) having an internal wall which defines an exhaust chamber, an inlet (3a) at an open end thereof, an exhaust port (connecting 30 and 32), oriented at an angle of between 0 and 90 degrees from an axis of the exhaust discharge chamber, a discharge opening (lateral opening in 31 extending to 7 and 50a), the port capable of communicating exhaust and sound to the atmosphere (through 3), the discharge opening operable to communicate exhaust into a passage (50a), a U-joint (5) having first and second ends, the first end being connected to the exhaust passage (50a), the second end being connected to an extension (e.g., 40, 40a). The reference to Kawamoto fails specifically teach the area of the exhaust port as being smaller than that of the open end of the chamber. In that some flow is directed to the port and some is directed to the U joint and thence the extension, it would have been obvious to one of ordinary skill in the art at the time of the invention to constrict the opening into the port so as to influence the exhaust flow to pass through both the port and the discharge opening. As regards claims 8, 9, 11, 12, 27 and 28 inasmuch as the reference to Kawamoto is directed to use with an exhaust system carrying high temperature gas, and further directed to quieting of the exhaust flow, it would have been obvious to one of ordinary skill in the art at the time of the invention to make at least a portion of the component from a heat resistant material so as to ensure that the material does not break down in contact with high temperature exhaust, and further it would have been obvious to one of ordinary skill in the art at the time of the invention to make at least a

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portion of the component from a sound deadening material so as to ensure that as little noise as possible is transmitted to the exterior environment, as far as practical.

The reference to Kawamoto fails to teach that the adapter is arranged to be placed with its inlet connected to the exhaust end of a silencer. Petley teaches that it is well known to provide an exhaust system having a pre-existing single silencer (e.g., 14) and add a further exhaust-silencing device (e.g., 28) downstream of the existing silencer, to further reduce the noise output. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the adapter arrangement taught by Kawamoto downstream of a first single silencer, e.g., such that the input 3a is connected to the discharge of the silencer, as taught by Petley, for the purpose of providing yet further sound reduction. As regards claim 13, inasmuch as Kawamoto teaches that at least the output end of the exhaust passage (50a) is directed to be substantially parallel with the input (e.g., 3a, downstream end of 2a, note figure 4), it would have been obvious to one of ordinary skill in the art at the time of the invention to place the upstream silencer taught by Kawamoto as modified by Petley in a portion of the exhaust line which is parallel with the passage (e.g., the downstream section of 2a) for the purpose of locating the various sound reducing components closely proximate each other. As regards claim 23, while the reference to Kawamoto as modified by Petley fails to explicitly teach the provision of a fastener provided on the exhaust passage of the adapter, which is operable to secure the adapter to the vehicle, Kawamoto does teach the provision of fastening devices (e.g., 61, 62) for connecting to the vehicle, and it would have been obvious to one of ordinary skill in the art at the time of the invention to locate a fastener proximate the exhaust passage of Kawamoto as modified by Petley, in order to accommodate connection to a vehicle having a fastener receiving portion located more forwardly, facilitating the interchangeable use of the system on plural vehicle structures.

4. Claims 6, 7, 19, 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawamoto in view of Petley and Holmes (US 1,591,088). The reference to Kawamoto as modified by Petley is discussed above and fails to teach the

explicit provision of separate connecting elements for securing the first and second ends of the U-joint to the exhaust passage and extension, respectively. Holmes teaches the use of a connector device (e.g., 22) for connecting portions of an exhaust system together, to allow an adjustable connection. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the connection between the U-joint and exhaust passage and extension taught by Kawamoto as modified by Petley with separate connector elements such as taught by Holmes, for the purpose of allowing the exhaust structure to be easily assembled together.

Response to Comments

5. Applicant's comments, filed with the amendment, have been carefully considered. Applicant has argued that the Independent claims are distinguishable above the Kawamoto reference. The examiner agrees. Note that the claims have been rejected by a combination of references as was very clearly set forth in the previous office action, and which is set forth herein as well. In response to applicant's arguments against the Kawamoto reference individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). To the extent the comments on page 10 of the papers filed on May 24th, 2007 can be construed as evidence of secondary considerations, the examiner notes that no affidavit or declaration under the appropriate section of 37 CFR has been filed. As regards the 'astonishing' results of noise reduction, the examiner agrees that this is evidence that applicant's invention, if the article is indeed actually directed to that invention as claimed herein, is functional. As to the reviewer's surprise that the adapter, if it is indeed actually the same invention as claimed here, "did not noticeably affect vehicle performance" is at odds with the actual content of the article's text, which notes that while "you can't even feel a difference" in trail riding (which, in itself, is not objective test data), the "hardly noticeable" performance reduction in wide-open runs is clear evidence that the

performance reduction is in fact noticeable. Applicant's arguments, then, are contradicted by the facts presented.

Conclusion

6. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


A response to this action should be mailed to:

Mail Stop _____
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

F. VANAMAN
Primary Examiner
Art Unit 3618


8/2/07